

CARLSBAD TOURISM BUSINESS IMPROVEMENT DISTRICT (CTBID) BOARD

May 15, 2013 AGENDA

1:30 p.m.
City of Carlsbad
1635 Faraday Avenue, Room 173A
Carlsbad, CA

NOTICE TO THE PUBLIC:

1. Meetings are divided into categories shown below
2. When you are called to speak, please come forward and state your name and address.
3. All persons requiring assistance or auxiliary aids in order to effectively participate may contact the Administrative Services Office (760-602-2409) at least 24 hours prior to the meeting to arrange for reasonable accommodations.

PUBLIC COMMENT:

If you desire to speak about an item not listed on the agenda, a pink "Time Reservation Request" form should be filed with the Board Minutes Clerk. A total of 15 minutes is provided for the Public Comment portion of the Agenda. Speakers are limited to three (3) minutes each.

If you desire to speak concerning an item listed on the agenda, a white "Time Reservation Request" form should be filed with the Board Minutes Clerk. Each speaker is limited to three (3) minutes each. Please remember to state your name and address for the record.

I. CALL TO ORDER

1:30 p.m.

II. ROLL CALL

CONSENT CALENDAR: The items listed under Consent Calendar are considered routine and will be enacted by one motion as listed. There will be no separate discussion on these items prior to the vote, unless an item is removed.

(C) III. APPROVE MINUTES OF APRIL 17, 2013

To approve the minutes of the April 17, 2013 meeting of the CTBID Board of Directors.

REPORTS AND DISCUSSION ITEMS:

IV. STAFF REPORT

Staff will provide the following reports at this time:

- 1) Financial Update

V. AB 05-13-90 ADOPT 2013-14 ANNUAL REPORT

Adopt Resolution 2013-3 approving the Fiscal Year 2013-14 CTBID Annual Report and Budget.

VI. AB 05-13-91 APPROVE CONTRACT WITH VISITCARLSBAD

Adopt Resolution 2013-4 entering into a contract with VisitCarlsbad for tourism promotion services for fiscal year 2013-14.

VII. AB 05-13-92 ELECTION OF OFFICERS

Election of new CTBID Board Vice-Chair

VII. NEXT MEETING

Set date for next meeting. Agenda topics to include:

1. CTBID Grant Funding Allocations
2. Visit Carlsbad and Midgruve year-end report

The remainder of the categories is for reporting purposes. In conformance with the Brown Act, no public testimony and no Board action can occur on these items.

GENERAL COUNSEL COMMENT

PUBLIC COMMENT

ADJOURNMENT

MINUTES

MEETING OF: CARLSBAD TOURISM BUSINESS IMPROVEMENT
DISTRICT BOARD MEETING

DATE OF MEETING: April 17, 2013

TIME OF MEETING: 1:30 p.m.

PLACE OF MEETING: Room 173A, Faraday Administrative Center, 1635 Faraday Avenue

CALL TO ORDER: Chair Stripe called the Meeting to order at 1:37 p.m.

ROLL CALL was taken by the Senior Deputy City Clerk, as follows:

Present: Stripe, Akers, Stiebeling, Nayudu.

Absent: Becerra, Canepa, McCormick.

CONSENT ITEMS:

On a motion by Board Member Nayudu the Board unanimously approved Consent Item, No. III.

III. MINUTES FOR APPROVAL

Minutes of the January 30, 2013.

REPORTS AND DISCUSSION ITEMS

IV. STAFF REPORT

Staff liaison Cheryl Gerhardt presented the staff report and PowerPoint presentation regarding the financial report for the reporting period ending February 2013 (on file in the Office of the City Clerk).

Ms. Gerhardt also presented the budget subcommittee's recommendations for the board's FY 2013-2014 budget. She reminded board members that the board would need to meet in May to adopt the FY 2013-14 budget that is scheduled to be presented to City Council for adoption in June.

Ms. Gerhardt explained that the budget subcommittee reviewed San Diego economic update reports while developing the proposed recommendations. Current year revenues were increased by 1% and included the addition of the new Legoland Hotel.

In response to an inquiry from Chair Stripe regarding immediate expenses once the new fiscal year began, Ms. Gerhardt stated that the VisitCarlsbad agreement with the BID required payments for the month of June early in July. She added that the subcommittee recommended that the Board reduce the contract with VisitCarlsbad by \$50,000 and move those funds into BID grants program. She informed the Board that via the Community and Economic Development Department, the City was exploring an opportunity to be a host for the AMGEN Tour of California Professional Bike Race in 2014.

Discussion ensued among board members regarding the potential of the City participating in the AMGEN event.

Ms. Gerhardt stated she would request that Community and Economic Development Director Kathy Dodson make a presentation to the board regarding this item at the board's next meeting.

Board Member McCormick arrived at 1:58 p.m.

Board Member Stiebeling said he agreed that the AMGEN Bike Race should have funds allocated in the grants program in the proposed budget, but added he was opposed to approving \$950,000 in estimated revenue for the r FY 2013-14 budget.

Discussion ensued among board members and staff regarding the board's reserve account, board revenue and expenses and hotel room bookings.

The board concurred to direct staff to return with a proposed budget which would include estimated revenues of \$925,000 for FY 2013-14 at its meeting in May.

V. AB 04-13-88 CTBID GRANT REQUESTS

Carlsbad Music Festival

VisitCarlsbad Executive Director Sam Ross stated the VisitCarlsbad Board did not recommend funding the Carlsbad Music Festival grant request because event holders expressed no interest in "growing" the event and it was felt there were not enough hotel room bookings during the Festival.

San Diego Jazz Festival

Mr. Ross said that the VisitCarlsbad Board did recommend funding the grant request from the San Diego Jazz Festival at \$5,000.

In response to an inquiry from Board Member Akers, Mr. Ross explained that the VisitCarlsbad Board recommended the reduced grant award because board members felt it was important to show that the city was committed to the event, but wanted festival holders to know it also was important to "grow" the event.

Board Member Akers stated she was concerned about recognition for Carlsbad when the event's title was "San Diego Jazz Festival."

Chair Stripe asked if there was a way to request that a "Carlsbad tag" be added to the event's website.

Ms. Gerhardt reminded the board that the grant agreement states that the event holder will acknowledge VisitCarlsbad in its advertising. She added that because the event was taking place in May, event printed advertising has already occurred.

Mr. Ross said he would talk to the event holders about adding a VisitCarlsbad logo or link on their website.

Board Member Stiebeling stated he was not in favor of approving this grant request due to the lack of "Carlsbad" in its advertising; and, because this is a first year event at the La Costa Resort

and Spa, that once over, the Resort will need to evaluate whether or not it will hold the event in the future.

Board Member Akers motioned to support the San Diego Jazz Festival event with a CTBID grant award of \$5,000 as recommended by the VisitCarlsbad Board.

Discussion ensued among board members regarding the event title, "San Diego Jazz Festival" and how "Carlsbad" could be factored into event advertising.

With assistance from Assistant General Counsel Paul Edmonson, Board Member Akers amended her motion to approve funding in the amount of \$5,000 to the San Diego Jazz Festival in accordance with grant guidelines and to request that the San Diego Jazz Festival display the VisitCarlsbad logo with a link on its website along with other sponsors' logos.

Vote: AYES: Stripe, Akers, Nayudu, McCormick. OPPOSED: Stiebeling.

On a motion by Board Member Nayudu, the board unanimously denied the grant request for funding from the Carlsbad Music Festival.

VI. 04-12-89 VISITCARLSBAD PROPOSAL FOR FISCAL YEAR 2013-14

Executive Director Sam Ross provided the Board with a review of VisitCarlsbad's program with allocations on funding and staffing (on file in the Office of the City Clerk). Mr. Ross added that VisitCarlsbad will perform an agency review at the end of summer.

In response to an inquiry from Board Member Akers, Mr. Ross explained that although not as effective, printed brochures were currently in place in airports and other tourist locations throughout the county.

Board Member McCormick suggested that the majority of funding allocated for brochure printing be reallocated to digital programming. Mr. Ross agreed that these funds could be used for digital media displays and that he would look at reallocating a lot of that budget to interactive marketing.

Discussion ensued among the board and Mr. Ross regarding the proposed reduction in VisitCarlsbad funding from the CTBID. The \$50,000 reduction in their budget was achieved by eliminating Group Direct Sales. Mr. Ross also informed the board that the public relations position would assume additional responsibilities since most of the public relations responsibilities were being contracted out..

VIII. NEXT MEETING

By consensus, the Board agreed to hold the next meeting on May 15, 2013, at 1:30 p.m.

By proper motion the Board Meeting of April 17, 2013, was adjourned at 2:50 p.m.

Sherry Freisinger
Senior Deputy Clerk

CARLSBAD TOURISM BUSINESS IMPROVEMENT DISTRICT AGENDA BILL

AB#	05-13-90	<i>Approve the Annual Report of the Carlsbad Tourism Business Improvement District</i>	CTBID STAFF	
MTG.	5-15-13		GENERAL COUNSEL	

RECOMMENDED ACTION:

Adopt Resolution No. 2013-3 approving the Annual Report of the Carlsbad Tourism Business Improvement District (CTBID) and submit the report to the City Council for approval at a June 2013 meeting.

ITEM EXPLANATION:

In accordance with Section 36533 of the California Streets and Highways Code, the CTBID Advisory Board is required to present an annual report for City Council’s review and approval for each fiscal year for which assessments are to be levied and collected to pay the costs for the improvements and activities described in the report. This report is to contain:

- Any proposed changes to the boundaries of the CTBID.
- The activities to be provided for that fiscal year.
- Estimate of the cost of providing those activities (ie budget)
- The method and basis of levying the assessment.
- The amount of any surplus or deficiency revenues to be carried over from the previous year.
- The amount of any other contributions

Staff has prepared the attached report (included as an attachment to Exhibit 1) which includes the above items.

Staff recommends that the Board approve the attached report for presentation to the City Council.

FISCAL IMPACT:

None.

ENVIRONMENTAL IMPACT:

This action does not qualify as a project under the California Environment Quality Act (“CEQA”) and will not have a physical adverse effect on the environment. (CEQA Regulation 15378(b).

EXHIBITS:

1. Resolution No. 2013-3, Approve Annual Report

DEPARTMENT CONTACT: Cheryl Gerhardt, 760-602-2753, [cheryl.gerhardt @carlsbadca.gov](mailto:cheryl.gerhardt@carlsbadca.gov)

RESOLUTION NO. 2013-3

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ADVISORY BOARD OF THE CARLSBAD TOURISM BUSINESS IMPROVEMENT DISTRICT (CTBID) OF THE CITY OF CARLSBAD, CALIFORNIA, TO APPROVE THE ANNUAL REPORT

WHEREAS, the CTBID was formed in accordance with the California Government Code Parking and Business Improvement Area Law of 1989 (Sections 36500, et. Seq. of the Streets and Highways Code), and

WHEREAS, Section 36533 of the Code requires the CTBID Advisory Board to present an annual report to the City Council's for their review and approval for each fiscal year for which assessments are to be levied and collected to pay the cost for the improvements and activities described in the report; and

WHEREAS, an Annual Report has been prepared for the 2013-14 fiscal year, and

WHEREAS, the Board of Directors of the Carlsbad Tourism Business Improvement District wishes to approve the Annual Report; and

WHEREAS, the Board of Directors of the Carlsbad Tourism Business Improvement District wishes to submit the report to the City Council for approval; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Carlsbad Tourism Business Improvement District of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That the Annual Report shown at Exhibit A is approved in its entirety by the Board of Directors of the Carlsbad Tourism Business Improvement District.

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3. That the approved Annual Report of the Carlsbad Tourism Business Improvement District will be presented to the City Council for their approval at a June 2013 meeting.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Board of Directors of the Carlsbad Tourism Business Improvement District of the City of Carlsbad held on the _____ day of _____, 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

TIM STRIPE, Chair

ATTEST:

BARBARA ENGLESON
Pro Tem Clerk of the
Carlsbad Tourism Business Improvement District

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**Carlsbad Tourism and Business Improvement District (CTBID)
Annual Report
2013-2014**

Method of Assessment: The CTBID includes all hotel businesses located within the CTBID boundaries. The assessment shall be levied on all hotel businesses, existing and future, within the City of Carlsbad based upon a flat fee of \$1.00 per occupied room per night for all transient occupancies as defined in section 3.12.020(7) of the Carlsbad Municipal Code. The amount of assessment shall be separately stated from the amount of the rent and other taxes charged, and each transient shall receive a receipt for payment from the operator. The assessment will be remitted monthly, based on \$1.00 per occupied room per night in revenues for the previous month.

Assessment Funding Purpose: To administer marketing and visitor programs to promote the City of Carlsbad as a tourism visitor destination and to fund projects, programs, and activities, including appropriate administrative charges, that benefit hotels within the boundaries of the District.

2013-14 Work Plan: Last fiscal year, the CTBID contracted with Carlsbad Convention and Visitors Bureau (dba VisitCarlsbad) to provide tourism marketing services for Carlsbad. In addition, \$50,000 in grants were awarded to fund projects and events to increase the overnight stays in Carlsbad hotels.

The CTBID 2013-14 budget includes \$750,000 in funding for VisitCarlsbad. The services provided will focus primarily on driving demand in the leisure market and secondarily in the meetings market. The majority of this will be done by interactive marketing. They will also contract with a public relations firm to work on branding Carlsbad. Funding also includes managing the visitor center and publications. The VisitCarlsbad Board will review the CTBID grant applicants and make the funding recommendations, for which there is \$150,000 allocated this year, to the CTBID Board.

Detail of the 2013-14 budget is shown on the following page.

2013-14 CTBID Budget

Program Areas	Description	2010-11 Actuals	2011-12 Actuals	2012-13 Budget	Actuals as of 1/31/2013	Projected 2012-13 Actuals	Recommended 2013-14 Budget
Carryover Fund Balance		\$65,353	\$62,678	\$113,074	113,074	113,074	128,724
<u>Revenues:</u>							
CTBID Assessment	\$1 per room night	791,301	856,708	900,000	545,764	900,000	925,000
Interest Earnings		761	1,276		142	150	0
Prior Year refunds			-12,135			0	
Total Estimated Revenues		792,062	845,849	900,000	545,907	900,150	925,000
<u>Expenditures:</u>							
2% Admin. Fee - City	2% of CTBID assessment revenue, for collection of CTBID assessment and accounting for CTBID	15,820	17,124	19,000	10,915	18,000	18,500
CCVB Payment	To operate visitor center, market and promote Carlsbad	743,434	744,576	800,000	466,669	800,000	750,000
Staff support	Staff support to the CTBID	15,663	14,753	16,500	5,154	16,500	18,000
CTBID Grants	Grant program established by CTBID Board	19,820	19,000	50,000	20,000	50,000	150,000
Contingency	To be determined by the CTBID Board at a later date	0	0	0	0	0	0
Total Expenses		794,737	795,453	885,500	502,738	884,500	936,500
Ending Fund Balance	Contingency for Revenue shortfall	\$62,678	\$113,074	\$127,574	\$156,243	128,724	117,224

**CARLSBAD TOURISM
BUSINESS IMPROVEMENT DISTRICT
AGENDA BILL**

AB#	05-13-91	<i>Approve Agreement between CTBID and the Carlsbad Convention and Visitors Bureau</i>	CTBID STAFF 
MTG.	5-15-13		GENERAL COUNSEL

RECOMMENDED ACTION:

1. Adopt Resolution No. 2013-4 authorizing the Chairperson to enter into agreement between the Carlsbad Tourism Business Improvement District (CTBID) and the Carlsbad Convention and Visitors Bureau (CCVB) for tourism promotion services for the period July 1, 2013 through June 30, 2014.

ITEM EXPLANATION:

Since the inception of the Carlsbad Tourism Business Improvement District (CTBID), the CTBID Board has contracted with Carlsbad Convention and Visitors Bureau 501C-6 corporation (dba VisitCarlsbad) to provide tourism marketing services for Carlsbad. The scope of those services have included operation of the visitor center, web site development and administration, print and internet advertising, public relations and various other tourism marketing activities identified in the contract for that fiscal year. The VisitCarlsbad Board develops the scope of work and presents it to the CTBID Board for approval along with the proposed budget for the work which is then included in the CTBID annual budget.

At the April 17, 2013 CTBID Board meeting, Visit Carlsbad presented to the CTBID Board its proposed program of work and budget for fiscal year 2013-14. Based on its review and discussion of the budget, the CTBID Board directed staff to bring back the contract for approval and to include funding for the contract in the CTBID's 2013-14 budget.

Following discussion, if the Board would like VisitCarlsbad to provide promotional and tourism marketing services for 2013-14 as outlined in the contract, the CTBID Board should adopt the resolution attached at Exhibit 1.

FISCAL IMPACT:

For the fiscal year 2013-14, projected revenues for the CTBID are estimated at \$925,000. The total payment for this contract for this twelve-month period is \$750,000.

ENVIRONMENTAL IMPACT:

This action does not qualify as a project under the California Environment Quality Act ("CEQA") and will not have a physical adverse effect on the environment. (CEQA Regulation 15378(b)).

EXHIBITS:

1. Resolution No. 2013-4 authorizing the Chairperson to enter into agreement between the CTBID and the CCVB for tourism promotion services for the period July 1, 2013 through June 30, 2014.

DEPARTMENT CONTACT: Cheryl Gerhardt, 760-602-2753, cheryl.gerhardt@carlsbadca.gov

RESOLUTION NO. 2013-4**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
CARLSBAD TOURISM BUSINESS IMPROVEMENT
DISTRICT, AUTHORIZING THE CHAIRPERSON TO
EXECUTE AGREEMENT WITH THE CARLSBAD
CONVENTION AND VISITORS BUREAU (CCVB) DOING
BUSINESS AS VISITCARLSBAD**

WHEREAS, The City Council of the City of Carlsbad adopted Ordinance No. NS-778 enacting Chapter 3.37 of the Carlsbad Municipal Code on November 15, 2005 thereby creating the Carlsbad Tourism Business Improvement District (CTBID); and

WHEREAS, the primary purpose of the CTBID is to promote tourism and provide services to visitors to the City of Carlsbad; and

WHEREAS, the City Council has authorized the Board of Directors of the CTBID to conduct the business of the CTBID in the time, place and manner that best suits the needs of the Board of Directors of the CTBID, subject to the control of federal, state and local laws governing the activities of a Business Improvement District; and

WHEREAS, the City Council has provided the Board of Directors with the ability to contract for services necessary to carry out the purpose of the CTBID; and

WHEREAS, the Board of Directors of the CTBID has determined that it is in the best interest of the District to promote tourism and provide services to visitors to the City of Carlsbad through the use of agencies that currently exist in the community to provide these services; and

WHEREAS, the Board of Directors has determined that the Carlsbad Convention and Visitors Bureau (CCVB) possesses the necessary skills to provide services related to the promotion of tourism; and

WHEREAS, the CCVB has agreed that its Board of Directors will not be changed without approval of the CTBID Board during the term of the contract; and

WHEREAS, the CCVB has agreed to provide tourism services under the terms and conditions of the agreement attached hereto for the term July 1, 2013 through June 30, 2014,

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Carlsbad Tourism Business Improvement District, as follows:

**AGREEMENT FOR PROMOTION OF TOURISM AND VISITOR SERVICES
CARLSBAD CONVENTION AND VISITORS BUREAU**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 20____, by and between the Carlsbad Tourism Business Improvement District (CTBID), and the Carlsbad Convention and Visitors Bureau, a non-profit, private organization ("Contractor").

RECITALS

- A. CTBID requires the professional services of a contractor that is experienced in tourism and visitor promotion programs and services.
- B. Contractor has the necessary experience in providing professional services and advice related to the promotion of tourism in Carlsbad.
- C. Selection of Contractor is expected to achieve the desired results in an expedited fashion.
- D. Contractor has submitted a proposal to CTBID and has affirmed its willingness and ability to perform such work.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, CTBID and Contractor agree as follows:

1. SCOPE OF WORK

CTBID retains Contractor to perform, and Contractor agrees to render, those services (the "Services") that are defined in attached Exhibit "A", which is incorporated by this reference in accordance with this Agreement's terms and conditions.

2. STANDARD OF PERFORMANCE

While performing the Services, Contractor will exercise the reasonable professional care and skill customarily exercised by reputable members of Contractor's profession practicing in the Metropolitan Southern California Area, and will use reasonable diligence and best judgment while exercising its professional skill and expertise.

3. TERM

The term of this Agreement will be effective for a period of one (1) year from the date July 1, 2013 through June 30, 2014.

4. TIME IS OF THE ESSENCE

Time is of the essence for each and every provision of this Agreement.

5. COMPENSATION

The total not to exceed fee payable for the Services to be performed during the initial Agreement term will be Seven Hundred Fifty Thousand dollars (\$750,000). No other compensation for the Services will be allowed except for items covered by subsequent amendments to this Agreement. The CTBID reserves the right to withhold a ten percent (10%) retention until CTBID has accepted the work and/or Services specified in Exhibit "A".

Compensation will be made in twelve (12) monthly installments of Sixty Two Thousand Five Hundred dollars (\$62,500) each month for a total of \$750,000 as detailed in the attached Exhibit A to this Agreement. The first installment shall be payable in the first full week of July 2013. Subsequent installments shall be paid in the first full week of each month, through the term of this Agreement. Adjustments to pay dates may be necessary due to the cash balance in the fund.

The CTBID reserves the right to terminate or reduce funding levels outlined in the Agreement in the event of CTBID revenue reductions. Recommended deductions will be reported to the CTBID Board who shall determine the modified funding level.

6. STATUS OF CONTRACTOR

Contractor will perform the Services in Contractor's own way as an independent contractor and in pursuit of Contractor's independent calling, and not as an employee of CTBID. Contractor will be under control of CTBID only as to the result to be accomplished, but will consult with CTBID as necessary. The persons used by Contractor to provide services under this Agreement will not be considered employees of CTBID for any purposes.

The payment made to Contractor pursuant to the Agreement will be the full and complete compensation to which Contractor is entitled. CTBID will not make any federal or state tax withholdings on behalf of Contractor or its agents, employees or subcontractors. CTBID will not be required to pay any workers' compensation insurance or unemployment contributions on behalf of Contractor or its employees or subcontractors. Contractor agrees to indemnify CTBID within thirty (30) days for any tax, retirement contribution, social security, overtime payment, unemployment payment or workers' compensation payment which CTBID may be required to make on behalf of Contractor or any agent, employee, or subcontractor of Contractor for work done under this Agreement. At the CTBID's election, CTBID may deduct the indemnification amount from any balance owing to Contractor.

7. SUBCONTRACTING

Contractor will not subcontract any portion of the Services without prior written approval of CTBID. If Contractor subcontracts any of the Services, Contractor will be fully responsible to CTBID for the acts and omissions of Contractor's subcontractor and of the persons either directly or indirectly employed by the subcontractor, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing

contained in this Agreement will create any contractual relationship between any subcontractor of Contractor and CTBID. Contractor will be responsible for payment of subcontractors. Contractor will bind every subcontractor and every subcontractor of a subcontractor by the terms of this Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract and approved in writing by CTBID.

8. OTHER CONTRACTORS

The CTBID reserves the right to employ other Contractors in connection with the Services.

9. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the CTBID and its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses including attorneys fees arising out of the performance of the work described herein caused by any negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The parties expressly agree that any payment, attorney's fee, costs or expense CTBID incurs or makes to or on behalf of an injured employee under the CTBID's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

10. INSURANCE

Contractor will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by Contractor or Contractor's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-:VII". **OR** with a surplus line insurer on the State of California's List of Eligible Surplus Line Insurers (LESLI) with a rating in the latest Best's Key Rating Guide of at least "A:X".

10.1 Coverages and Limits.

Contractor will maintain the types of coverages and minimum limits indicated below, unless CTBID Attorney or CTBID Manager approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Contractor's indemnification obligations under this Agreement. CTBID, its officers, agents and employees make no representation that the limits of the insurance specified to be carried by Contractor pursuant to this Agreement are adequate to protect Contractor. If Contractor believes that any required insurance coverage is inadequate, Contractor will obtain such additional insurance coverage, as Contractor deems adequate, at Contractor's sole expense.

10.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

10.1.2 Automobile Liability (if the use of an automobile is involved for Contractor's work for CTBID). \$1,000,000 combined single-limit per accident for bodily injury and property damage.

10.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code. Workers' Compensation will not be required if Contractor has no employees and provides, to CTBID's satisfaction, a declaration stating this.

10.1.4 Professional Liability. Errors and omissions liability appropriate to Contractor's profession with limits of not less than \$1,000,000 per claim. Coverage must be maintained for a period of five years following the date of completion of the work.

10.2. Additional Provisions. Contractor will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

10.2.1 The CTBID will be named as an additional insured on General Liability.

10.2.2 Contractor will obtain occurrence coverage, excluding Professional Liability, which will be written as claims-made coverage.

10.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to CTBID sent by certified mail pursuant to the Notice provisions of this Agreement.

10.3 Providing Certificates of Insurance and Endorsements. Prior to CTBID's execution of this Agreement, Contractor will furnish certificates of insurance and endorsements to CTBID.

10.4 Failure to Maintain Coverage. If Contractor fails to maintain any of these insurance coverages, then CTBID will have the option to declare Contractor in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Contractor is responsible for any payments made by CTBID to obtain or maintain insurance and CTBID may collect these payments from Contractor or deduct the amount paid from any sums due Contractor under this Agreement.

10.5 Submission of Insurance Policies. CTBID reserves the right to require, at anytime, complete and certified copies of any or all required insurance policies and endorsements.

11. BUSINESS LICENSE

Contractor will obtain and maintain a City of Carlsbad Business License for the term of the Agreement, as may be amended from time-to-time.

12. ACCOUNTING RECORDS

Contractor will maintain complete and accurate records with respect to costs incurred under this Agreement. All records will be clearly identifiable. Contractor will allow a representative of CTBID during normal business hours to examine, audit, and make transcripts or copies of records and any other documents created pursuant to this Agreement. Contractor will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

13. OWNERSHIP OF DOCUMENTS

All work product produced by Contractor or its agents, employees, and subcontractors pursuant to this Agreement is the property of CTBID. In the event this Agreement is terminated, all work product produced by Contractor or its agents, employees and subcontractors pursuant to this Agreement will be delivered at once to CTBID. Contractor will have the right to make one (1) copy of the work product for Contractor's records.

14. COPYRIGHTS

Contractor agrees that all copyrights that arise from the services will be vested in CTBID and Contractor relinquishes all claims to the copyrights in favor of CTBID.

15. NOTICES

The name of the persons who are authorized to give written notices or to receive written notice on behalf of CTBID and on behalf of Contractor under this Agreement.

For CTBID:

Cheryl Gerhardt
CTBID Staff
City of Carlsbad
1635 Faraday Ave.
Carlsbad, CA 92008
Phone No. 760-602-2753

For Contractor:

Sam Ross
Executive Director
VisitCarlsbad
400 Carlsbad Village Drive
Carlsbad, CA 92008
Phone No. 760-434-6093

Each party will notify the other immediately of any changes of address that would require any notice or delivery to be directed to another address.

16. RESERVED

17. GENERAL COMPLIANCE WITH LAWS

Contractor will keep fully informed of federal, state and local laws and ordinances and regulations which in any manner affect those employed by Contractor, or in any way affect the performance of the Services by Contractor. Contractor will at all times observe and comply with these laws, ordinances, and regulations and will be responsible for the compliance of Contractor's services with all applicable laws, ordinances and regulations.

Contractor will be aware of the requirements of the Immigration Reform and Control Act of 1986 and will comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, subcontractors and consultants that the services required by this Agreement.

18. DISCRIMINATION AND HARASSMENT PROHIBITED

Contractor will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

19. DISPUTE RESOLUTION

If a dispute should arise regarding the performance of the Services the following procedure will be used to resolve any questions of fact or interpretation not otherwise settled by agreement between the parties. Representatives of Contractor or CTBID will reduce such questions, and their respective views, to writing. A copy of such documented dispute will be forwarded to both parties involved along with recommended methods of resolution, which would be of benefit to both parties. The representative receiving the letter will reply to the letter along with a recommended method of resolution within ten (10) business days. If the resolution thus obtained is unsatisfactory to the aggrieved party, a letter outlining the disputes will be forwarded to the CTBID Board. The CTBID Board will consider the facts and solutions recommended by each party and may then opt to direct a solution to the problem. In such cases, the action of the CTBID Board will be binding upon the parties involved, although nothing in this procedure will prohibit the parties from seeking remedies available to them at law.

20. TERMINATION

In the event of the Contractor's failure to prosecute, deliver, or perform the Services, CTBID may terminate this Agreement for nonperformance by notifying Contractor by certified mail of the termination. If CTBID decides to abandon or indefinitely postpone the work or services contemplated by this Agreement, CTBID may terminate this Agreement upon written notice to Contractor. Upon notification of termination, Contractor has five (5) business days to deliver any documents owned by CTBID and all work in progress to CTBID address contained in this Agreement. CTBID will make a determination of fact based upon the work product delivered to CTBID and of the percentage of work that Contractor has performed which is usable and of worth to CTBID in having the Agreement completed. Based upon that finding CTBID will determine the final payment of the Agreement.

Either party upon tendering thirty (30) days written notice to the other party may terminate this Agreement. In this event and upon request of CTBID, Contractor will assemble the work product and put it in order for proper filing and closing and deliver it to CTBID. Contractor will be paid for work performed to the termination date; however, the total will not exceed the lump sum fee payable under this Agreement. CTBID will make the final determination as to the portions of tasks completed and the compensation to be made.

21. COVENANTS AGAINST CONTINGENT FEES

Contractor warrants that Contractor has not employed or retained any company or person, other than a bona fide employee working for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this Agreement. For breach or violation of this warranty, CTBID will have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of the fee, commission, percentage, brokerage fees, gift, or contingent fee.

22. CLAIMS AND LAWSUITS

By signing this Agreement, Contractor agrees that any Agreement claim submitted to CTBID must be asserted as part of the Agreement process as set forth in this Agreement and not in anticipation of litigation or in conjunction with litigation. Contractor acknowledges that if a false claim is submitted to CTBID, it may be considered fraud and Contractor may be subject to criminal prosecution. Contractor acknowledges that California Government Code sections 12650 *et seq.*, the False Claims Act applies to this Agreement and, provides for civil penalties where a person knowingly submits a false claim to a public entity. These provisions include false claims made with deliberate ignorance of the false information or in reckless disregard of the truth or falsity of information. If CTBID seeks to recover penalties pursuant to the False Claims Act, it is entitled to recover its litigation costs, including attorney's fees. Contractor acknowledges that the filing of a false claim may subject Contractor to an administrative debarment

proceeding as the result of which Contractor may be prevented to act as a Contractor on any public work or improvement for a period of up to five (5) years. Contractor acknowledges debarment by another jurisdiction is grounds for CTBID to terminate this Agreement.

23. JURISDICTIONS AND VENUE

Any action at law or in equity brought by either of the parties for the purpose of enforcing a right or rights provided for by this Agreement will be tried in a court of competent jurisdiction in the County of San Diego, State of California, and the parties waive all provisions of law providing for a change of venue in these proceedings to any other county. This Agreement shall be interpreted pursuant to the laws of the State of California.

24. SUCCESSORS AND ASSIGNS

It is mutually understood and agreed that this Agreement will be binding upon CTBID and Contractor and their respective successors. Neither this Agreement or any part of it nor any monies due or to become due under it may be assigned by Contractor without the prior consent of CTBID, which shall not be unreasonably withheld.

25. ENTIRE AGREEMENT

This Agreement, together with any other written document referred to or contemplated by it, along with the purchase order for this Agreement and its provisions, embody the entire Agreement and understanding between the parties relating to the subject matter of it. In case of conflict, the terms of the Agreement supersede the purchase order. Neither this Agreement nor any of its provisions may be amended, modified, waived or discharged except in a writing signed by both parties.

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26. AUTHORITY

The individuals executing this Agreement and the instruments referenced in it on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions of this Agreement.

CONTRACTOR

Carlsbad Tourism Business
Improvement District

*By: _____
(sign here)

By: _____
Tim Stripe CTBID Board Chair

(print name/title)

ATTEST:

(e-mail address)

**By: _____
(sign here)

Sherry Freisinger
Clerk of CTBID

(print name/title)

(e-mail address)

If required by CTBID, proper notarial acknowledgment of execution by contractor must be attached. If a Corporation, Agreement must be signed by one corporate officer from each of the following two groups.

***Group A.**
Chairman,
President, **or**
Vice-President

****Group B.**
Secretary,
Assistant Secretary,
CFO **or** Assistant Treasurer

Otherwise, the corporation must attach a resolution certified by the secretary or assistant secretary under corporate seal empowering the officer(s) signing to bind the corporation.

APPROVED AS TO FORM:

CELIA A. BREWER, General Counsel to CTBID

By: _____
Assistant General Counsel

Scope of Services

1. VisitCarlsbadⁱ Board appointments and reappointments will be approved by the CTBID Board.
2. Provide periodic updates at the CTBID's request and a year-end report on the program of work deliverables which shall include an accounting of funds spent by the program in a format approved by the CTBID Board. Develop measurability indicators to report on performance of program. Allocation of the unspent funds shall be determined by the CTBID Board.
3. Review CTBID grant applications and make funding recommendations to the CTBID Board.
4. Develop a program of work that is primarily focused on driving demand in the leisure market segment. The Visit Carlsbad Board will approve and oversee the program of work and corresponding budget allocations which are included at the end of the scope.
5. Prioritize and develop market intelligence on the leisure travel segment. Extract Carlsbad visitor information from San Diego Tourism Authority visitor profile study. Expand Smith Travel Research subscription to include key competitive markets.
6. Primarily focus on VisitCarlsbad.com as the primary distribution channel for new business opportunities for those CTBID propertiesⁱⁱ and Carlsbad tourism suppliers.
 - a. Partner with local tourism suppliers to develop new products or packages consistent with the current market demand for special offers.
 - b. Develop visitor-relevant content.
 - c. Grow space on VisitCarlsbad website group section adding group email opt-in.
 - d. Develop and add mobile applications to website.

EXHIBIT A

7. Deliver an interactive marketing campaigns focused on driving traffic to visitcarlsbad.com and hotel reservations. Promotional campaigns will include but not be limited to pay-per-click advertising, on-line display advertising, content development, social media, promotions, and email marketing. A Request for Proposal is to be done after summer to ensure that Visit Carlsbad is getting the best value for delivering this program.
8. Pitch editorial ideas to travel writers and online blogging communities and write relevant content for the website, including:
 - a. Pitch story ideas, what's new, and host travel writers.
 - b. Coordinate media FAMs in partnership with SDTA, CTBID properties, and local tourism suppliers.
9. Manage the visitor center, visitor publications and collateral, including:
 - a. Service visitor walk-ins with local/regional tourism information,
 - b. Collect geographical data from walk-in visitors,
 - c. Refer visitors to local tourism suppliers,
 - d. Manage visitor publications distribution and other collateral,
 - e. Produce print advertising for inclusion on state and local DMO program,
10. Develop partnerships and co-op opportunities with CTBID properties, local tourism suppliers, and regional DMOs, such as Visit Oceanside, SDTA, and CTTC.
11. Manage outside public relations firm to work on "branding Carlsbad".

ⁱ VisitCarlsbad is the dba to be used by the Carlsbad Convention and Visitors Bureau effective June 2009.

ⁱⁱ CTBID properties are the hotels and timeshare assessed by the CTBID.



FY14 VISIT CARLSBAD BUDGET

EXHIBIT A

	FY13 Budget (F)	FY13 YTD (A)	5 Variance	FY14 Budget	% Variance Budget FY13 to FY14
INCOME					
Public Sources					
CTBID Revenues	800,000	666,670	# (133,330)	750,000	1 -7%
Total Public Sources	800,000	666,670	(133,330)	750,000	-7%
TOTAL INCOME	800,000	666,670	(133,330)	750,000	-7%
EXPENSE					
Labor					
Salaries	201,337	177,835	(23,502)	205,864	4 2%
Payroll Taxes	16,556	14,273	(2,283)	17,000	3%
Works Comp	3,800	1,433	(2,367)	4,000	5%
Benefits	22,500	18,506	(3,994)	22,328	-1%
Total Labor	244,193	212,047	(32,146)	249,192	2.0%
Promotional Programs					
Advertising & Production	22,700	34,080	11,380	5,000	-354%
Research	2,800	4,350	1,550	5,000	44%
Outside Services-Interactive Marketing	335,000	272,250	(62,750)	371,000	10%
Outside Services-Group Direct Sales	48,000	48,000	0	-	2 -100%
Outside Services-Public Relations	70,000	50,533	(19,468)	70,000	0%
Public Relations Events	0	0	0	4,000	3 100%
Travel & Entertainment	10,000	12,951	2,951	10,000	0%
Dues & Subscription	10,000	3,571	(6,429)	1,500	-567%
Collateral Production & Fulfillment	28,000	13,341	(14,659)	5,000	-460%
Total Promotional Programs	526,500	439,076	(87,424)	471,500	-12%
Bulk Mail	0	-	-	-	
General Administration		30			
Bank Charges	1,157	224	(933)	1,000	-16%
Equipment Rental & Maintenance	3,000	2,299	(701)	3,000	0%
Facility Repair & Maintenance	150	89	(62)	150	0%
Insurance	2,400	806	(1,594)	2,400	0%
Office Supplies	3,000	1,889	(1,111)	3,000	0%
Postage	2,000	1,654	(111)	2,000	0%
Taxes	150	563	1,504	150	0%
Telephone	6,000	4,796	(5,437)	6,000	0%
Professional Services	5,600	4,800	(804)	5,600	0%
Volunteer Program	1,000	651	3,800	1,000	0%
Miscellaneous	150	527	501	300	50%
Utilities	3,700	1,986	(3,173)	3,700	0%
Computer Expense	1,000	1,577	986	1,008	1%
Total G&A	29,307	21,890	(27,730)	29,308	0%
TOTAL EXPENSE	800,000	673,013		750,000	-6.7%
OVER/(UNDER)	0	6,343		(0)	

FOOTNOTES

- 1 Budget reduced by \$50k for FY2014
- 2 The majority of the budget cut will come from Group Direct
- 3 Add PR Events line item to cover PR Event costs
- 4 2% COLA
- 5 FY13 (A) is YTD up to May 2013

FY14 -- PROGRAM OF WORK
VISIT CARLSBAD

Strategy and Tactics	Timing				Budget	Comments
	Q1	Q2	Q3	Q4		
Prioritize and develop market intelligence on the leisure travel segment Extract Carlsbad visitor information from SDCVB Visitor Profile Study STR subscription to include key competitive markets	√				5,000	STR Report
Manage Interactive agency Program of Work Including pay-per-click advertising, display advertising, email	√	√	√	√	371,000	Digital Advertising Agency
Manage Public Relations Program of Work Including hosting travel writers, lead generation, fielding broadcast	√	√	√	√	70,000	Public Relations Agency
Develop partnerships and coop advertising opportunities Produce print/digital advertising for inclusion of local suppliers	√	√			5,000	
Manage visitor publications and fulfillment Visitor center maps	√	√	√	√	5,000	
Review CTBID Grant Applications and make funding recommendations	√					
Earn unpaid media exposure through public relations Pitch story ideas, whats new, host travel writers Coordinate media FAMs with PR agency	√	√	√	√	4,000	Visit CA Media Events
Travel & Entertainment	√	√	√	√	10,000	
Partnerships & subscriptions with regional/national tourism orgs. Regional DMO memberships	√	√	√	√	<u>1,500</u>	
TOTAL PROMOTIONAL PROGRAM OF WORK					471,500	

**CARLSBAD TOURISM
BUSINESS IMPROVEMENT DISTRICT
AGENDA BILL**

AB#	05-13-92	<i>Election of Vice Chair of the Carlsbad Tourism Business Improvement District (CTBID) Board of Directors</i>	CTBID STAFF	
MTG.	5-15-13		GENERAL COUNSEL	

RECOMMENDED ACTION:

The Board needs to elect a new Vice Chair of the Carlsbad Business Improvement District (CTBID).

ITEM EXPLANATION:

At its May 18, 2011 Board meeting, the CTBID Board elected Bill Canepa as Vice Chair of the CTBID Board. The Board approved a two year term for Board Vice Chair . The two year term is now up and the Board needs to elect a Board member to the position for a two year term. A suggested process for electing officers is attached at Exhibit 1.

FISCAL IMPACT:

None.

ENVIRONMENTAL IMPACT:

This action does not qualify as a project under the California Environment Quality Act ("CEQA") and will not have a physical adverse effect on the environment. (CEQA Regulation 15378(b).

EXHIBITS:

1. Suggested process for election of officers.

DEPARTMENT CONTACT: Cheryl Gerhardt, 760-602-2753, [cheryl.gerhardt @carlsbadca.gov](mailto:cheryl.gerhardt@carlsbadca.gov)

Exhibit 1

**Carlsbad Tourism Business Improvement District
Election of Officers
Process Outline**

1. The Vice Chair (or acting Chair) will act as the election official to conduct the election or if the election is for Vice-Chair, the Chair will act as the election official.
2. The election official will take nominations from the floor for Chair of the CTBID. It is not necessary to call for a "second" for a nomination. All members of the Board are eligible to hold the office of the Chair (or Vice-Chair). Any member of the Board may nominate any other member. Members may nominate themselves.
3. After receiving the nominations, the election official will close nominations and call for a vote by the Board. If candidates are unopposed or there's no major contest for an office, then voice vote may be taken. If there is a major contest for an office, paper ballots may be used.
4. The candidate with the most votes (quorum of votes) will be the CTBID Chair.
5. Repeat the process for Vice-Chair if necessary (ie the current Vice-Chair is elected Chair).